IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 116 of 2005

And

WRIT APPEAL NO:117 of 2005

W.A.No.116 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19/01/2005 in WP NO : 24426 OF 2004 on the file of the High Court.)

Between:

Ramadevi Wines Licence No. 636/98-88 Mypa Village, Palakoderu Mandal West Godavari District rep by Licence Holder Shri A. Yesu Babu R/o Bondadapeta Kalla Mandal, West Godavari District

..... APPELLANT

AND

1. K. Kondal Rao S/o Venkanna R/o Visakoderu Village Palakoderu

Mandal, West Godavari District
2 The Government of Andhra Pradesh rep by Principal Secretary

Excise Department, Secretariat, Saifabad, Hyderabad
3 Commissioner of Prohibition and Excise Government of Andhra

Pradesh, Hyderabad
4 Prohibition and Excise Superintendent Eluru, West Godavari

District.

...RESPONDENT(S)

Counsel for the Appellant:MR.O.MANOHER REDDY

Counsel for the Respondent No.1: Mr.P.Venkat Reddy

Counsel for the Respondent Nos. 2 to 4.: GP FOR PROHIBITION & EXCISE

WRIT APPEAL NO : 117 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 14/12/2004 in WP NO : 21749 OF 2004 on the file of the High Court.)

Between:

Ramadevi Wines Licence No. 636/98-88 Mypa Village, Palakoderu Mandal West Godavari District rep by Licence Holder Shri A. Yesu Babu R/o Bondadapeta Kalla Mandal, West Godavari District

..... APPELLANT

AND

1 K. Kondal Rao S/o Venkanna R/o Visakoderu Village Palakoderu

Mandal, West Godavari District.

2 The Government of Andhra Pradesh rep by Principal Secretary Excise

Department, Secretariat, Saifabad, Hyderabad

3 Commissioner of Prohibition and Excise, Government of Andhra

Pradesh, Hyderabad.

4 Prohibition and Excise Superintendent Eluru, West Godavari District

.....RESPONDENT(S)

Counsel for the Appellant:MR.O.MANOHER REDDY

Counsel for the Respondent No.1: Mr.P.Venkat Reddy

Counsel for the Respondent Nos.2 to 4: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

On 14th December, 2004, learned single Judge disposed of writ petition of the first respondent with direction that in case first respondent would make a representation within ten days from the date of the order pointing out his objection for the proposed shifting of shop by the appellant herein, appropriate decision shall be taken by the Commissioner after considering the objection of the first respondent.

On 20th December, 2004, the Commissioner, Prohibition, in obedience to the orders of the Court proceeded to pass order granting permission to the appellant to shift his shop in respect of which the appellant had licence in Form IL 24 from Mypa village of Palakoderu Mandal to Kodavalli located in Bheemvaram Municipality. The said order was challenged by the first respondent in the second writ petition, which was allowed by the learned single Judge on the ground that the Commissioner ignored the first order of the learned single Judge and it was incumbent on him to pass orders only after considering the objections of the first respondent.

Both the orders are under challenge by the appellant in these two appeals on the ground that the first respondent being IL 24 licence holder and running a shop at Visakoderu village within two kilometer periphery of Bhimavaram Municipality is a rival trader and has no locus standi to object to the shifting of the shop by the appellant from Mypa village to Bheemavaram. Since respondent No.1 had no locus standi to question the shifting of the shop by the appellant, direction could not have been issued by the learned single Judge for considering the objections of the first respondent. There was earlier recommendation made in favour of the appellant for shifting of the shop and it was for the authorities concerned to take into consideration the policy as well as the rules and regulations while granting permission to see

whether the rights of the first respondent would be adversely affected.

We have heard the counsel for the parties.

The very objection of the first respondent is that by ignoring the policy and the rules prescribed by the A.P. State Government, recommendation has been made to the appellant for shifting his shop from Mypa village to Bhimavaram Municipal peripheral area whereas already respondent No.1 is running a shop at Visakoderu within two kilometer periphery of Bhimavaram Municipality and is liable to pay annual licence fee of Rs.8.20 lakhs in respect of his shop which is located within the limits of Bhimavaram Municipality. In view of the nature of objection, we do not consider that the objection of the learned counsel for the appellant about locus standi of the first respondent has any force more particularly in view of what has been held by the Supreme Court in M.S.JAYARAJ vs COMMISSIONER OF EXCISE [2000 (7) SCC 552]. The only direction issued by the learned single Judge by the first order was to take the objections of the first respondent into consideration before granting permission. According to the first respondent, objections were filed and without taking those objections into consideration, the Commissioner proceeded to accord permission and since order was passed by the Commissioner by ignoring the judicial order directing him take into consideration the objections of the first respondent, the second order was passed setting aside the order of the Commissioner granting permission to shift the shop of the appellant. With such orders passed by the learned single Judge, we do not find any ground to interfere in these two appeals and we proceed to dismiss the same. The Commissioner will pass fresh orders in accordance with law after taking into consideration the objections filed by the first respondent.

_____

DEVINDER GUPTA, CJ

28-1-2005

_____

M.NARAYANA REDDY, J

Tvr

To

1. The Principal Secretary, Government of Andhra Pradesh,

Excise Department, Secretariat, Saifabad, Hyderabad

2 The Commissioner of Prohibition and Excise Government of

Andhra Pradesh, Hyderabad

3 The Prohibition and Excise Superintendent Eluru, West Godavari

District.

4 2 CCs to the Govt. Pleader for Prohibition and Excise, High Court

Buildings, Hyderabad (OUT).

5 2 CD copies.